

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL FRANKO,

Plaintiff,

-against-

OSKAR LEWNOWSKI et al.,

Defendants.
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USDC SDNY
DOCUMENT
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DATE FILED: 9/22/2021

21-CV-6115 (VSB)

ORDER

VERNON S. BRODERICK, United States District Judge:

On September 21, 2021, Plaintiff filed an amended complaint pursuant to Federal Rule of Civil Procedure 15(a)(1)(B). (Doc. 15.) “[W]hen a plaintiff properly amends [a] complaint after a defendant has filed a motion to dismiss that is still pending, the district court has the option of either denying the pending motion as moot or evaluating the motion in light of the facts alleged in the amended complaint.” *Pettaway v. Nat’l Recovery Sols., LLC*, 955 F.3d 299, 303–04 (2d Cir. 2020). Accordingly, it is hereby:

ORDERED that Defendants shall file a letter on or before September 29, 2021 deciding whether their motion to dismiss should be deemed moot without prejudice to refile a new motion to dismiss in accordance with Federal Rule of Civil Procedure 15(a)(3), or if I should evaluate Defendants’ current motion to dismiss in light of the facts alleged in the amended complaint.

SO ORDERED.

Dated: September 22, 2021
New York, New York



Vernon S. Broderick
United States District Judge